

INTRODUCTION

- [1] This decision determines an application filed with the Residential Tenancy Office (the “Rental Office”) under the *Residential Tenancy Act* (the “Act”).
- [2] The Landlord served an eviction notice to the Tenants seeking to end the tenancy because of behaviour disturbing others and subletting without consent. The Tenants dispute the notice.
- [3] The Tenants seek a determination that the Landlord interfered with their right to quiet enjoyment.

DISPOSITION

- [4] I find that the Notice is invalid and the tenancy agreement will continue.
- [5] I find that the Tenants have not established that the Landlord interfered with their right to quiet enjoyment.

BACKGROUND

- [6] The Unit is a one-bedroom, one-bathroom apartment located in a 73-unit building (the “Residential Property”) that the Landlord has managed since the Spring of 2010.
- [7] The Landlord and the Tenants (AG and SP) entered into a written, fixed-term agreement from December 1, 2022 to November 30, 2023 (the “Tenancy Agreement”). The tenancy then continued on a month-to-month basis. Rent in the amount of \$702.00 is due on the first day of the month and a security deposit of \$667.00 was paid around November of 2022.
- [8] On July 18, 2025 the Landlord served the Tenants with a *Form 4(A) Eviction Notice* with a vacate date of August 31, 2025 for disturbing others and subletting without consent (the “Notice”). The particulars of termination state:

“Video surveillance at apartment building shows confrontation with superintendent. Video surveillance clearly shows furniture being removed in and around July 1/25. Inspection of unit shows no signs of bed in apt.”

- [9] On July 21, 2025 the Tenants filed a *Form 2(A) Tenant Application to Determine Dispute* (the “Application”) with the Rental Office disputing the Notice and seeking a determination regarding the Tenants’ right to quiet enjoyment.
- [10] On July 30, 2025 the Rental Office sent the parties notice of a teleconference hearing scheduled for August 19, 2025 along with a copy of the Application.
- [11] On August 4, 2025 the Rental Office sent the parties notice of a teleconference hearing rescheduled for September 9, 2025 along with a copy of the Application.
- [12] On August 27, 2025 the Rental Office provided the parties evidence through TitanFile, being a 66-page PDF and three videos (the “Evidence Package”).
- [13] On September 9, 2025 the Tenants, the Tenants’ witness, the Landlord’s representative (the “Representative”) and the Landlord’s witness (“CW”) participated in a teleconference hearing. The parties confirmed that all evidence submitted to the Rental Office was included in the Evidence Package except for the two-page Schedule “D” submitted late by the Landlord and two of the Tenants’ videos that the Tenants had technological issues delivering to the Rental Office. Part of this evidence was shared and addressed during the hearing. One of the Tenants’ videos was provided to the Landlord after the hearing and the parties were provided the opportunity to make written comments.

ISSUES

- A. Must the Tenants and all occupants vacate the Unit for behaviour disturbing others?
- B. Must the Tenants and all occupants vacate the Unit for subletting without consent?
- C. Did the Landlord interfere with the Tenants' right to quiet enjoyment?

ANALYSIS**Legal Bases**

- [14] The Landlord has the onus to prove, on the civil standard of the balance of probabilities, a valid reason to end the tenancy contained in the Notice.
- [15] In Order LR24-64 the Island Regulatory and Appeals Commission made the following comment regarding a landlord ending a tenancy (paragraph 21):

"The termination of a tenancy is a serious matter and accordingly a Landlord seeking to evict a tenant must put forward compelling evidence..."

- [16] The Landlord seeks to end the tenancy under clauses 61(1)(d) and (i) of the Act, which state:

A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:

(d) the tenant or a person permitted on the residential property by the tenant has
(i) significantly interfered with or unreasonably disturbed another
occupant or the landlord of the residential property,
(ii) seriously jeopardized the health or safety or a lawful right or interest
of the landlord or another occupant, or
(iii) put the landlord's property at significant risk;

(i) the tenant purports to assign or sublet the rental unit without first obtaining the
landlord's written consent as required by section 30;

- [17] For the reasons below, I find that the Notice is invalid.

A. Must the Tenants and all occupants vacate the Unit for behaviour disturbing others?**January 27, 2024 Incident**

- [18] Part of the Landlord's basis for ending the Tenancy Agreement is due to an incident that occurred on January 27, 2024 between AG, the Representative and another tenant ("TH"). The Representative also lives in the Residential Property.
- [19] AG parked in TH's designated parking spot at the Residential Property, which led to a confrontation between AG, the Representative and TH.
- [20] The parties provided their testimony regarding the incident during the hearing. The Landlord provided a written statement signed by TH dated August 20, 2025. The Tenants submitted their recording of part of the incident and the parties provided written submissions regarding the recording.
- [21] I note that almost 18 months passed from January 27, 2024 to the date that the Notice was served.

- [22] It is difficult to meet the threshold of significantly interfering or unreasonably disturbing others when so much time has passed. It would be expected that an eviction notice would be served close to the time of the incident if it was of such severity to justify the end of the tenancy.
- [23] Another issue with the delay in serving an eviction notice is with regard to the accuracy of evidence. The people giving evidence are trying to remember details of an incident that occurred 18 months ago.
- [24] The Tenants' audio recording of the incident lasts 1 minute and 43 seconds. While it does not contain the entire incident, it does show the Representative making statements that escalate the conflict.
- [25] I find that the evidence presented does not establish a breach of clause 61(1)(d). However, it is clear that fallout from this incident was a strained relationship between the Representative and AG.

July 12, 2025 Incident

- [26] The parties provided evidence regarding a confrontation between the Representative and AG during the evening of July 12, 2025.
- [27] The Landlord's surveillance video shows AG arriving at the Residential Property while the Representative is cutting grass on a ride-on lawn mower. AG approaches the Representative and the Representative stops the mower. AG comes in close proximity to the mower. A few moments later the Representative drives the mower towards the Residential Property's entrance and AG makes a kicking motion at the mower.
- [28] With regard to the kicking motion, the Tenants' evidence is that the lawn mower made contact with AG's other foot and AG's reaction was to attempt to push the mower away.
- [29] The Representative stated that as he drove away AG kicked at the mower. The Representative did not realize that AG had kicked at the time. The Representative later talked to another tenant who told him about AG's kick.
- [30] The parties' evidence establishes that AG confronted the Representative alleging that the Representative had followed SP in a vehicle the night before.
- [31] The Representative and CW's evidence is essentially that AG engaged in aggressive and threatening behaviour. AG threatened that there would be *"big trouble for you"* if the Representative followed SP again and AG stated that the Representative was *"messing with the wrong f'ing person."* The Representative asked AG if this was a threat and AG would not give a direct answer. The Representative asked AG again if this was a threat, and AG responded that it was a threat to *"stay away from his wife [SP] or else."*
- [32] AG's evidence is that the "threat" to the Representative was that AG would report the Representative following SP to the police. If the Representative believed that AG getting the police involved was a threat, then yes, AG was threatening the Representative.
- [33] I have reviewed the evidence of the parties.
- [34] AG exercised poor judgment directly confronting the Representative regarding his belief that the Representative was following SP. AG should have directed these types of concerns to the police and let the police address any issues. AG could also have contacted the Representative's supervisor to attempt to address any issues.
- [35] However, I am not satisfied that this incident amounts to behaviour justifying the end of the tenancy.

- [36] AG's evidence is that his kicking motion was in response to the mower making contact with AG's other foot. From the evidence presented, including the Landlord's video, it does not appear that AG was kicking at the Representative. It appears that AG was kicking the mower and either missed the mower or made minimal contact.
- [37] I do not have the benefit of an audio recording showing exactly what AG and the Representative stated. Based upon the evidence presented, I am not satisfied that AG was threatening to harm the Representative. AG provided a reasonable explanation that he was threatening to involve the police. In the circumstances of this case, I do not consider involving the police to be a harmful action. Instead, everyone would have been better off if the police resolved the dispute instead of a direct confrontation.
- [38] As a result, I find that the evidence presented regarding this incident does establish a breach of clause 61(1)(d).
- [39] I note that the Landlord's evidence raised issues with the condition of the Unit, including claims that the Tenants did not report repair issues in a timely manner. I note that these issues were not identified in the particulars of the Notice.
- [40] Clause 61(1)(d) encompasses a broad range of matters and it is important to provide particulars of the specific issues when selecting this basis of termination. Otherwise, the recipient of the eviction notice may not know the events causing the eviction.
- [41] Most of the Landlord's evidence addresses the January 27, 2024 and July 12, 2025 incidents. I find that there is insufficient objective evidence regarding the condition of the Unit and a failure to report repair issues. I note that the Tenants' photographs show the Unit in a clean condition. I also note that I do not have an inspection report from the Department of Environmental Health regarding the Unit. Based upon the evidence presented, it is unclear to me how long the Unit's plumbing issue existed.

B. Must the Tenants and all occupants vacate the Unit for subletting without consent?

- [42] The Landlord's second basis for ending the tenancy is for subletting without consent. Subsection 30(1) of the Act states:

A tenant may, with the written consent of the landlord, sublet or assign a rental unit or part of a rental unit to another person.

- [43] The Tenants' evidence is that SP's mother ("OG") has lived in the Unit since February of 2024. In the summer of 2025 SP went to college in New Brunswick. Since SP left for college, AG has temporarily stayed at another rental unit out of respect for OG's religious beliefs.

- [44] Subsection 1(u) defines a subtenant as follows:

"subtenant" means the person to whom a tenant sublets or assigns a rental unit under section 30;

- [45] Subsection 30(6) describes the consequences of subletting as follows:

Where a tenant has sublet a rental unit to another person

(a) the tenant remains entitled to the benefits and is liable to the landlord for the breaches of the tenant's obligations under the tenancy agreement or this Act during the subtenancy; and

(b) the subtenant is entitled to the benefits and is liable to the tenant for the breaches of the subtenant's obligations under the subletting agreement or this Act during the subtenancy.

- [46] The evidence of the parties establishes that the Tenants did not seek the Landlord's consent to sublet the Unit to OG.
- [47] The issue in this case is whether OG is a subtenant within the meaning of the *Act*. In particular, I must determine whether or not there is a subletting agreement between the Tenants and OG.
- [48] Subsection 1(w) of the *Act* defines the term "*tenancy agreement*," which governs the relationship between a landlord and a tenant.
- [49] The term "*subletting agreement*," which governs the relationship between a tenant and a subtenant, is not defined. However, if a subletting agreement exists, then there would be rent payable by the subtenant to the tenant as a condition for the subtenant remaining in the rental unit. I note that subsection 30(8) provides rules regarding the amount of rent that a tenant can charge to a subtenant.
- [50] In this case the evidence does not establish that OG agreed to pay rent to the Tenants. It has not been established that OG is required to pay money or other consideration to the Tenants as a condition for OG to use the Unit.
- [51] On June 20, 2025 the Tenants provided the Landlord with banking information for direct withdrawals from OG and/or another family member's bank account to pay the Unit's rent to the Landlord. The Tenants did not advise the Landlord of the bank account's owner(s) until during the hearing.
- [52] However, I am not satisfied that this arrangement amounts to an agreement for OG to pay money to the Tenants as a requirement for OG's use of the Unit. Instead, it appears that OG occupies the Unit because OG is a family member.
- [53] At the hearing the Tenants denied that they had a written subletting agreement with OG and they denied that they held a security deposit from OG.
- [54] Based upon the evidence presented, I am not satisfied that the Tenants sublet the Unit to OG because there does not appear to be a written or oral subletting agreement.
- [55] I also find that OG is not an assignee. The evidence does not establish an intent for OG to permanently replace the Tenants and for OG to become a direct tenant of the Landlord.
- [56] For these reasons, I find that a breach of clause 61(1)(i) of the *Act* has not been established.

Schedule "D"

- [57] The Landlord submitted into evidence Schedule "D" of the Tenancy Agreement, which includes the following clause V:

"It is understood and agreed the premises are for the aforementioned named tenants only and any additional people moving in will be cause for eviction

NUMBER OF ADULTS 2 NUMBER OF CHILDREN 0 "

- [58] I note that ending a tenancy agreement based upon the breach of a material term involves a different procedure. Clause 61(1)(h) states as follows:

A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:

(h) the tenant

*(i) has failed to comply with a material term of the tenancy agreement, and
(ii) has not corrected the situation within a reasonable time after the landlord has given written notice to do so;*

- [59] An eviction notice must include the grounds for ending the tenancy (subsection 53(d)).
- [60] The Landlord did not select breach of a material term of the Tenancy Agreement in the Notice. Therefore, I cannot consider this basis for ending the Tenancy Agreement in this decision.
- [61] I note that the validity of clause V would need to be considered in the context of section 22 of the Act and a Tenants' right to quiet enjoyment of a rental unit.
- [62] I also note that a tenancy agreement can be ended for an unreasonable number of occupants in a rental unit under clause 61(1)(c) (also not selected in the Notice). This ground of termination is connected to the *Public Health Act Rental Accommodation Regulations* (the "*Health Regulations*") and the minimum health requirements for rental units.
- [63] However, at this point it appears that only OG lives in the Unit full time and the amount of time the Tenants' child lives in the Unit is contested. Further, under these *Health Regulations* children under one are not counted for ascertaining the number of persons occupying any room and children from one to ten are deemed to be one-half a person (section 11).
- [64] The parties may contact the Department of Environmental Health regarding what would be considered an unreasonable number of occupants in the Unit.
- [65] As noted above, these additional bases for termination were not selected in the Notice and are not determined in this decision.

C. Did the Landlord interfere with the Tenants' right to quiet enjoyment?

- [66] I have reviewed the evidence of the parties and it does not establish that the Landlord breached the Tenants' right to quiet enjoyment.
- [67] I am not satisfied that the Representative engaged in intimidation behaviour or was following SP. The Representative provided detailed evidence disputing the Tenants' claims. The Representative provided reasonable explanations regarding how he happened to observe the Tenants' and OG's vehicles and was not following the vehicles from the Residential Property.
- [68] The Tenants also claim that the Representative improperly confronted OG. The Representative provided evidence that on July 17, 2025 he spoke with OG at the request of his supervisor. The Representative asked OG who she was and why she had keys to the Unit.
- [69] I find that it was reasonable for the Representative to ask OG who she was and why she had keys to the Unit. I note that this incident occurred in the context of the Tenants having recently removed an extensive amount of their belongings from the Unit and the Representative believing that the Tenants were absent from the Residential Property.
- [70] On July 2, 2025 the Landlord emailed SP asking for an explanation regarding the amount of items being moved out of the Unit. SP responded stating in part "*I'm still living there.*"

[71] SP's email was not a full or transparent response to the Landlord's inquiry. SP should have disclosed that OG was living in the Unit. I expect that this would have avoided the July 17, 2025 encounter between the Representative and OG.

[72] I also note that section 13 of the *Health Regulations* imposes a duty on landlords to keep track of who is living in residential properties, stating as follows:

"In the case of dwellings containing three or more dwelling units the owner shall keep a register containing the names of all persons occupying each dwelling unit within his dwelling."

[73] The Representative asking OG who she was is consistent with the Landlord's legal duty.

[74] The Tenants provided a nine second video which appears to show an operating vacuum. Upon review of this video, it appears to me that the vacuum bumps the door. I am not satisfied that this was negligent or deliberate behaviour that the Landlord intended to disturb the Tenants or their family.

CONCLUSION

[75] The Notice is invalid and the tenancy agreement will continue.

[76] The Tenants have not established that the Landlord breached their right to quiet enjoyment.

IT IS THEREFORE ORDERED THAT

1. The Notice is invalid and the tenancy agreement will continue.

DATED at Charlottetown, Prince Edward Island, this 22nd day of September, 2025.

(sgd.) Andrew Cudmore

Andrew Cudmore
Residential Tenancy Officer

NOTICE

Right to Appeal

This Order can be appealed to the Island Regulatory and Appeals Commission (the "Commission") by serving a Notice of Appeal with the Commission and every party to this Order within **20 days of this Order**. If a document is sent electronically after 5:00 p.m., it is considered received the next day that is not a holiday. If a document is sent by mail, it is considered served on the third day after mailing.

Filing with the Court

If no appeal has been made within the noted timelines, this Order can be filed with the Supreme Court of Prince Edward Island and enforced as if it were an order of the Court.